

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

SouthEast Telephone, Inc.	)	
Expedited Petition for Waiver of Deadlines in Sections	)	
54.307(c)(2) and 54.802(a) of the Commission's Rules	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

**SOUTHEAST TELEPHONE, INC.  
EXPEDITED PETITION FOR WAIVER OF DEADLINES IN  
SECTIONS 54.307(c)(2) AND 54.802(a) OF THE COMMISSION'S RULES**

SouthEast Telephone, Inc. ("SouthEast"), by counsel and pursuant to Section 1.3 of the Commission's rules, hereby petitions the Commission for a waiver of the September 30, 2005, deadline for filing line count data for both High Cost Model Support and Interstate Access Support, as set forth in Sections 54.307(c)(2) and 54.802(a) of the Commission's rules. SouthEast requests that the Commission direct the Universal Service Administrative Company ("USAC") to accept as timely the data submission that SouthEast sent by certified mail on September 23, 2005 and that USAC received on October 3, 2005.

SouthEast is a competitive local exchange carrier ("CLEC") operating exclusively in very rural portions of Eastern Kentucky. With only about 160 employees, SouthEast qualifies as a "small entity" under applicable Small Business Administration guidelines. SouthEast has been designated as an Eligible Telecommunications Carrier ("ETC") in the state of Kentucky and is eligible to receive High Cost Model Support and Interstate Access Support pursuant to Sections 54.307 and 54.807 of the Commission's rules. SouthEast sent its required reporting data via certified mail to USAC on September 23, 2005. That filing was not received by USAC until

October 3, 2005. As a result, USAC deemed SouthEast ineligible for support payments for an entire calendar quarter.

SouthEast Telephone is submitting this filing to request a waiver of the filing deadlines to receive this support. SouthEast fully understands the importance of timely certification filings by all ETCs, and felt assured that seven days would be adequate time for USAC to receive the data. SouthEast has previously sent the line count reports in this manner with no delays and regrets the delay experienced in this instance. In the future, SouthEast will take all necessary steps to prevent similar delays by sending the reports via the verified overnight delivery method. For the reasons provided below, the public interest would be served by a waiver of the filing deadline in these circumstances, permitting SouthEast to receive the support to which it is entitled.

Section 1.3 of the Commission's rules authorizes the Commission to waive application of any of its rules upon a showing of good cause, and in general the Commission waives rules where special circumstances have been shown, and where those particular facts make strict compliance inconsistent with the public interest. <sup>1/</sup> In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

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<sup>1/</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

On November 29, 2005, the Commission's Wireline Competition Bureau released an Order granting waivers of line count filing deadlines to several ETCs. <sup>2/</sup> In that Order, the Bureau found that waivers were appropriate because: (1) given that all the filings were received within two business days of the due date, the delays did not impair the administration of the USF; (2) the carriers believed they were filing on time; and (3) the carriers acted in good faith and have implemented steps to ensure filings would not be late in the future. In the same Order, the Bureau found that waivers were appropriate where delays in filing were unusual and unforeseeable occurrences attributable to third parties. For example, several companies received waivers because they sent the filings by U.S. mail a week or more in advance, and had good reason to expect that the documents would be delivered in a timely manner.

SouthEast Telephone respectfully submits that the same factors considered in the *Benton/Linn Waiver Order* apply to the circumstances confronting SouthEast here, and therefore, strict application of the September 30 deadline for submission would be contrary to the public interest. First, the September 30, 2005 deadline was on a Friday, and USAC received the filing on Monday, October 3, 2005. Therefore, the filing was received only one business day following the deadline. Such a short delay did not impair the administration of the USF in any way.

Second, SouthEast believed it was filing on time, like the carriers that received waivers in the *Benton/Linn Waiver Order*. Like those carriers, SouthEast sent the report via certified mail more than a week in advance, which the Bureau determined to be a timely manner. This is the same procedure SouthEast has followed numerous times with no delay; it had no reason to expect a delay in this instance. Like the carriers in the *Benton/Linn Waiver Order*, SouthEast's good faith

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<sup>2/</sup> Federal-State Joint Board on Universal Service; *Benton/Linn Wireless, et al., Petition for Waiver*, CC Docket No. 96-45, Order, DA 05-3111 (WCB, released Nov. 29, 2005) ("*Benton/Linn Waiver Order*").

reliance on U.S. mail was reasonable and the delay was an unusual and unforeseeable occurrence attributable to the U.S. Postal Service, not SouthEast.

SouthEast had every reason to believe that its filing was timely, like the carriers that received waivers in the *Benton/Linn Waiver Order*. To be sure, the Bureau clarified the application of the rules in that Order and noted that similar “special circumstances” should be rare in the future. But SouthEast made the filing, which it believed was on time, several months *before* the release of the *Benton/Linn Waiver Order*. Indeed, while Section 1.7 of the Rules states that documents submitted to the Commission are considered “filed” when received by the Commission, the filings at issue here were due to be submitted to USAC, not to the Commission. Prior to release of the *Benton/Linn Waiver Order*, SouthEast had good reason to believe that this USAC filing would be subject to the more generally accepted “mailbox rule” – *i.e.* that a document is considered “sent” when it is deposited into a mailbox or other postal system receptacle – which applies to deadlines for tax filings to the Internal Revenue Service and deadlines for many other governmental and quasi-governmental filings. [3/](#)

Finally, like the carriers in the *Benton/Linn Waiver Order*, SouthEast acted in good faith, and has taken steps to assure that such errors will not occur in the future. As noted above, in the future SouthEast intends to send the reports via the U.S. Postal Service’s verified overnight delivery method.

A waiver of the filing deadline is also consistent with the Commission’s well-established universal service policies. Allowing SouthEast to receive support for the given period is clearly

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[3/](#) See, e.g., *Legille v. Dann*, 544 F.2d 1, 4 (D.C. Cir. 1976) (proof that mail matter is properly addressed, stamped and deposited in an appropriate receptacle has long been accepted as evidence of delivery to the addressee). See also *Communications Vending Corporation of Arizona, Inc., et. al. v. Citizens Communications Co.*, 17 FCC Rcd 24201, 24229 (2002) (same).

consistent with the Commission's statutory goal of preserving and advancing universal service, and will advance the public interest. SouthEast is a very small CLEC and needs high-cost support to continue providing universal service to its rural customer base. The loss of an entire quarter's worth of high-cost support will have a significant impact on SouthEast's ability to provide low cost telephone service to the economically disadvantaged people of rural Kentucky.

For the reasons stated herein, SouthEast respectfully submits that good cause has been shown for the grant of the requested waiver. Grant of this waiver will enable SouthEast to continue serving rural Kentucky, consistent with the statutory goal of preserving and advancing universal service for rural consumers. This result is clearly consistent with the public interest. Accordingly, SouthEast respectfully requests that the Commission grant this request and direct USAC to accept SouthEast's reports as timely filed as of September 30, 2005. Moreover, given the very significant impact of delay in universal service funding for a very small CLEC like SouthEast, we respectfully request that the waiver be granted as expeditiously as possible.

Respectfully submitted,

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/s/  
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